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IN THE
Supreme Court of the United States

OCTOBER TERM, 1951.

No. 86.

HOWARD B. HUGHES, *Appellant*,

v.

UNITED STATES OF AMERICA, *Appellee*.

On Appeal From Final Judgment of the United States
District Court for the Southern District of New York.

REPLY BRIEF OF APPELLANT.

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The brief for the United States avoids a forthright presentation or admission of the facts because:

1. It avoids quotations from or direct references to the actual wording of the consent decree and resorts to unfairly limited quotations and argumentative conclusions as to its meaning.

2. It does not admit squarely that no evidence was received to support the order appealed from, but states

unsupported conclusions, seemingly as if they were facts from the record.

3. It repeatedly refers to proceedings in cases theretofore severed from this case and which occurred after the entry of the consent decree here involved, and the implications of such references may not be verified from the record, even though they were otherwise proper to be considered here.

Apparent in the Government's brief is the same type of argument which may well have misled the District Court. There is a tendency to confuse the issues of fact and law by repeated references to anti-trust suits against the other motion picture companies; by loosely attributing to appellant acts or activities in which he had no part and by arguing the most vague generalities which have no support in reason or in precedent.

The Government's brief (page 4) asserts that the consent decree " * * * provided, *inter alia*, for divorcing RKO's exhibition business from its production and distribution business. * * *" Aside from a representation (R. 171) with respect to a specific plan of reorganization which has been in fact carried out exactly as written, the consent decree consists of specific injunctions. No part of it is couched in generalities, later to be construed by the Court, as might easily be implied from the assertion.

The Government states (Brief, page 5) " * * * Section V of the judgment provided for disposition of appellant's stock in one of the other new companies within a year from the date of the judgment, and gave him the option of selling the stock himself or turning it over to a trustee who shall be entitled to vote the stock. * * *" Such statement is untrue. The consent decree clearly and unambiguously provided that appellant should have the option "either" to dispose of his stock "or" to put it in the voting trust.

It is improper for appellee to refer to proceedings in the Paramount case which occurred after the severance and settlement of this cause (Brief, page 6).

It is improper for appellee to refer (Brief, page 7) to Record 242, 247-248 as if it were evidence of an asserted fact when the reference is to unsupported assertions contained in the oral argument of Government counsel in the District Court.

Page 8 of the Government's brief consists entirely of unsupported assertions respecting actions by RKO (not appellant) which were expressly approved by the District Court and respecting matters without the record here such as claimed oral conversations between counsel respecting motions to be filed in the District Court.

On page 10 of its brief the Government states "Section V is an integral part of that decree. It provided that, within the year, appellant, the dominant stockholder in RKO, would dispose of his stock in one of the new companies." Such statement is untrue.

It is improper for the Government to refer (Brief, page 15) to judgments against other defendants in severed causes, particularly when the accuracy of the statements may not be verified from this record.

The Government asserts (Brief, page 21) " * * * As was well known to the district court, in the interim appellant and the RKO defendants had repeatedly manifested considerable reluctance to effectuate the divorce contemplated by the 1948 decree. * * * " Such statement is untrue. Prior to the order appealed from, appellant had never taken part in any proceeding in the District Court except to give his consent to Section V of the consent decree and to point out in connection with certain applications by RKO that he could not trustee his stock in either of the new companies until such new company should be formed.

The Government asserts (Brief, page 26, footnote 13) "Appellant was not a defendant in the original proceedings, for the simple reason that he acquired his holding subse-

quent to the commencement of the litigation. * * * The Government failed to inform the Court that neither appellant's predecessor in title nor any other stockholder was a party to the proceedings.

The Government asserts (Brief, page 27) " * * * It was well known to the district court that appellant and RKO had sought numerous extensions and modifications between the time of entry of the decree and the date appellee brought on its motion to establish a time limit for final disposition of the stock (statement, *supra*, pp. 7-9)." Such statement is not true. Appellant Howard Hughes has never sought any extension or modification of any decree herein and neither is there any evidence of any "course of conduct" by appellant as is referred to on page 27.

Prior to the entry of the consent decree the mandate of this court (R. 169) called for a new trial with respect to certain issues, including the remedy of divorcement sought by the Government. There was not at the time of the entry of the consent decree, nor at any time since has there been, any evidence before the District Court upon which it could grant any relief against appellant or RKO with respect to divorcement. The consent decree (R. 170) expressly provided that it should not constitute evidence of any violation of the anti-trust laws and it contained no adjudication of any kind except that certain carefully specified injunctions should be issued as agreed upon. The Government does not allege or claim that the consent decree was in any way ambiguous.

The fallacy of the Government's argument is this. It assumes by a short cut, and in the absence of any such recitation in the decree itself, that the parties are bound by some "purpose" which goes beyond the carefully specified provisions therein contained. It then builds upon this false foundation a second false argument that it was within the power of the District Court, without hearing evidence upon the subject, to alter the express provisions and

guaranteed rights voluntarily subscribed by the parties and the Court upon mere unsupported motion by the Government.

The Government argues that the voting trust as it is written might continue indefinitely. Appellant consented to the terms as written. It would be contrary to law and good sense now to torture the terms of the trust agreement which the Government asked appellant to sign into a forfeiture of his stock which he never agreed to because of the Government's later thinking upon that subject. At least there should be some evidence on the subject.

Respectfully submitted,

T. A. SLACK,

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Howard R. Hughes.*

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Acknowledgment of Service.

Due service according to the rules of the Supreme Court of five copies of the within Reply Brief of Appellant is hereby acknowledged.

Dated this 4th day of January, 1952.

Attorney for Appellee.

